

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2249 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHORKUMAR SOMNATH PANDYA

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR RAVI R TRIPATHI for Petitioner  
RULE SERVED for Respondent No. 1, 3, 4  
MR MD PANDYA for Respondent No. 2

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/12/98

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Ravi R. Tripathi for the petitioner, learned Advocate Shri M.D. Pandya for respondents nos.1 and 2 and learned A.G.P.Mr.K.T.Dave for respondents nos.3 and 4.

2. Respondent no.1 is a statutory board established

under the provisions of the Electricity Act, 1910 for the purpose of generating and managing the distribution of electricity within the State of Gujarat. Respondent no.2 is an authority established by respondent no.1 to supervise and manage activities of respondent no.1 for the specified area having a Divisional Office at Bhuj, District Kachchh. Respondents nos.3 and 4 are the authorities established by the State of Gujarat and are also delegated powers to discharge requisite functions prescribed under the provisions of the Apprenticeship Act, 1961.

3. The petitioner is a citizen of India and has approached to this Court under Articles 14, 16 and 226 of the Constitution of India to challenge, 'inaction' on the part of respondents nos.1 and 2 in providing the registration number of apprenticeship agreement entered into between the petitioner and respondent no.2. The petitioner has prayed relief for the grant of appropriate writ or direction to respondents nos.1 and 2 to provide registration number of apprenticeship agreement of the petitioner in respect to apprenticeship training undergone by the petitioner with respondents nos. 1 and 2 for the period from 20-9-1983 to 21-9-1988. The petitioner has also prayed an alternative relief to grant appropriate writ or direction to the respondents to waive the condition imposed against the petitioner vide communication dated 27-1-1986 addressed by respondent no.2 stating that it is obligatory for the petitioner to appear and pass the trade test taken by the National Training Council under the provisions of the Apprenticeship Act, 1961 (hereinafter referred to as "the Act").

4. The petitioner having obtained a degree of B.Sc. had applied for apprenticeship in the establishment of respondent no.1. That petitioner was selected and was intimated about his selection vide communication dated 8th December, 1983, copy of which is produced at Annexure "A" on running page 18 of the compilation. That vide said communication, the petitioner was informed about his selection for being engaged as full term apprentice for training in the trade of Clerk( Book Keeping and Accountancy)/(General)/Cashier for the period of one year on the terms and conditions mentioned in the said letter. That thereafter vide office order dated 21-9-1983, copy of which is produced at Annexure "B" on page 20 the petitioner was given posting at Bhuj Divisional Office of respondent no.1 for undergoing apprenticeship in the trade of Book Keeping & Accountancy for the period of one year.

5. It is contended by the petitioner that he has completed the said training as apprentice for the period from 20-9-1983 to 21-9-1984 satisfactorily for which a certificate has also been issued by the Deputy Engineer(Technical), Bhuj to the petitioner. Copy of the said certificate is produced at Annexure "D", running page 22 of the compilation. That vide order dated 19-9-1984 issued by respondent no.2 the petitioner was relieved from his post as an apprentice trainee with effect from 20-9-1984 (A.N.) on completion of one year.

6. It is also contended by the petitioner that as per requirement of the Apprenticeship Act, 1961, the agreement of apprenticeship entered into between the petitioner and respondent no.2 was required to be registered under the provisions of the said Act. That respondent no.2 had forwarded the said agreement to respondent no.4 for the purpose of registration, however, said agreement was returned to respondent no.2 by respondent no.4 on the ground that the petitioner was not qualified for the trade in which he was appointed as apprentice under the said contract, and thereby, necessary correction may be made in the contract and contract may be sent again for registration. According to the petitioner, on account of mistake committed by the officials working under respondent no.2, the contract initially entered into between the petitioner and respondent no.2 could not be corrected as suggested by respondent no.4 within the stipulated period and also within the duration of one year, the training period given to the petitioner. That thereby though the name of the petitioner was shown at serial no.1 in the waiting list prepared by respondent no.2 to offer employment as Junior Assistant in the establishment of respondent no.1, the petitioner was informed that his name from the said waiting list shall be cancelled if the petitioner does not appear and pass the trade test held by the National Training Council.

7. It is further contended by the petitioner that in order to appear in the trade test held by the National Training Council, the petitioner was required to state the registration number of his apprenticeship agreement with other particulars in the form prescribed by the authority. That despite repeated attempts and requests made to respondent no.2 the petitioner was not provided with the said registration number and, in the meanwhile, the petitioner received a telegram on 21-4-1986 stating the fact that the petitioner is permitted to appear in the Trade test held on 21-4-1986 at Gandhidham (Bhuj),

District Kachchh. The said telegram was received by the petitioner at his residence and the place of Trade test centre being situated at far distance in the District Kachchh at Gandhidham and the test was held on 21-4-1986, the day on which he received the telegram, it was physically not possible for the petitioner to attend the centre of test and to appear at the said test. That thereafter petitioner repeatedly requested the respondents to grant employment to the petitioner subject to condition of passing trade test but the respondents have failed to consider the same. Thus, on account of negligence and inaction on the part of respondents nos.1 and 2, the petitioner could not get registration number of his apprenticeship agreement and as such could not appear in the trade test during the period of his training from 20-9-1983 to 21-9-1984 and that thereafter the respondents having failed to consider his request, the petitioner has filed the present petition.

8. Shri Ravi Triipathi, learned Advocate appearing on behalf of the petitioner has contended that it is the duty of respondent no.2 as employer to forward the apprenticeship agreement to the concerned authority within the stipulated period for registration. That only registered apprentices could appear at the trade test held by the National Training Council to provide eligibility for the employment. That in the case of the petitioner, inaction on the part of respondents nos.1 and 2 to rectify the mistake and get the apprenticeship agreement of the petitioner registered within a stipulated period has resulted into not only hardship but it has deprived the petitioner an opportunity of employment in the establishment of respondent no.1 though the other similarly situated candidates of the batch of the petitioner are offered employment. That as such inaction on the part of respondents nos.1 and 2 in getting the apprenticeship agreement of the petitioner registered within the stipulated period and/or to waive the condition of passing trade test for the eligibility of employment in the establishment of respondent no.1 has resulted into discrimination, and therefore, petition should be allowed and appropriate relief should be granted.

9. On scrutiny of facts and circumstances apparent from the record, it appears that the petitioner has failed to avail the opportunity granted to the petitioner by way of a special case to appear in a trade test even after a lapse of two years of completion of his training as apprentice and as such submission urged on behalf of the petitioner cannot be accepted either on facts or in

law for the reasons stated hereinafter.

10 It may be noted that the requisite qualification for registration of an apprentice in respect to trade of Book Keeping and Accountancy is prescribed under the Act as of passing New S.S.C. examination (10+2 system) with special subjects of commerce. It is undisputed that the petitioner did not possess the said qualification though he has passed examination of B.Sc. That the petitioner having opted for science stream of New S.S.C. examination had not undergone the course of commerce stream prescribed for New S.S.C. examination with special subjects of commerce. That on account of said defect the petitioner was not eligible to be appointed as apprenticeship trainee in the trade of Book Keeping and Accountancy. However, instead of rejecting the apprenticeship contract of the petitioner with respondent no.2, the respondent no.4 has provided an opportunity to the petitioner by returning the contract to respondents nos. 1 and 2 for necessary correction.

11. It is true that on account of lack of coordination and/or confusion of the officials working under respondent no.2, or otherwise, the agreement of apprenticeship entered into between the petitioner and respondent no.2 could not be returned to respondent no.4 after necessary correction within the duration of his training period. However, the said fact has not resulted into any miscarriage of justice as the case of the petitioner was sympathetically considered by respondent no.4 and the petitioner was given special opportunity as an exceptional case. It may be noted that respondent no.4 had suggested to respondent no.2 to accommodate the petitioner as apprentice trainee in the trade of Clerk(General) for which the petitioner was duly qualified and to correct the agreement entered into between the parties accordingly and thereafter to return the same for registration. That though on account of confusion or lapse on the part of officials working under respondent no.2 the corrected agreement could not be sent to respondent no.4 before 21-9-1984 when the training period of the petitioner as apprentice had come to an end, the petitioner is shown further favour by granting another opportunity to appear at the trade test held on 21-4-1986. The documentary evidence by way of Annexures "A" to "O" produced by the petitioner himself falsify the facts urged on behalf of the petitioner in as much as the petitioner having received the intimation by telegram dated 21-4-1986 at his residence on the same day and examination centre having been situated at far place like Bhuj, the petitioner could not appear in the said test.

On the contrary facts emerging from the said document suggest that the petitioner received the intimation well in advance in respect to the date of holding of the test on 21-4-1986. That intimation letter dated 7-3-1986 Annexure "P" - Page 39 was sent to petitioner by respondent no.2. The petitioner has produced xerox copy of letters addressed by the petitioner to respondent no.3 dated 24-3-1986 vide Annexure "L" and "M" at running page 31 and 33 wherein he has stated that he desired to appear at the ensuing trade test, however, registration number for his apprenticeship agreement being a necessary particular for submission of application to appear in the said test may be furnished to him. Furthermore, the petitioner had also sent examination fee of Rs.5/- by money order, copy of which is produced at Annexure "N" on running page 35. The petitioner has stated in the said money order form sent as an examination fee for the said trade test of April, 1986, that other necessary particulars have also been sent separately. That vide letter dated 24-3-1986, copy of which is produced on record at Annexure "M" on page 33, the petitioner has again requested to accept his examination fee and other particulars forwarded for the trade test and to send him registration number of his apprenticeship agreement. Thus, the facts emerging from documents discussed hereinabove clearly disclose that prior to 21-4-1986, the petitioner was well aware of the fact that he has to appear in a trade test held on 21-4-1986 at Bhuj, District Kachchh. The said fact falsifies the facts averred by the petitioner in the petition that he could not appear in the trade test as he received the telegraphic intimation only on 21-4-1986 at his residence and it was not physically possible for him to reach Bhuj where the test was held. On appreciation of facts and circumstances emerging from the material produced on record and particularly the affidavit filed by Bhagubhai Ambalal Patel respondent no.4, it clearly appears that petitioner himself did not desire to appear at the trade test but desired to get employment subject to a condition that he would appear and pass the trade test thereafter. The petitioner cannot claim such an employment as a matter of right.

12. It is significant to note that the terms and conditions of apprentice agreement clearly disclose that employer was not under obligation to offer employment at the end of training under the said agreement. Similarly, employee was also not under obligation to serve the employer on completion of training. That thereby merely on grant of apprenticeship training the petitioner had not acquired a vested right to claim employment with

respondent no.2 as prescribed u/s. 22 of the Act.

13. Furthermore, as apparent from the affidavit of respondent no.4 which is produced on record at pages 41 to 45 of the compilation, the department had shown special favour to the petitioner and his case was treated as an exceptional case whereby he was permitted to appear at trade test without registration of apprenticeship agreement. That the registration of apprenticeship agreement in the case of petitioner was given a retrospective effect as the same was registered after the completion of the duration of his training. However, the petitioner appears to have failed to avail the opportunity given by the respondents to appear at the trade test for the purpose of acquiring eligibility to remain at serial no.1 on the waiting list of respondent no.1 for the divisional office at Bhuj.

14. Shri Ravi Tripathy learned Advocate appearing for the petitioner could not point out any fact from the averments made in the petition to establish the case that the petitioner was deprived of an opportunity of employment on account of any lapse or inaction on the part of respondents nos.1 and 2 and that similarly situated candidates were offered employment. As a matter of fact no such contention could have been permitted to be canvassed at the Bar in the absence of necessary averment in the petition.

15. That on overall consideration of the facts and circumstances apparent from the record and discussed hereinabove, the petition appears to be misconceived and without any substance and therefore deserves rejection. Hence, petition stands disposed of as rejected. Rule is discharged. However, in the facts and circumstances of the case, no order as to costs.

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